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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,880	08/04/2003	Philip G. Wessells	20003-7012	5236
35939	7590	03/09/2005	EXAMINER	
MICHAEL E. WOODS PATENT LAW OFFICES OF MICHAEL E. WOODS 112 BARN ROAD TIBURON, CA 94920-2602			HECKENBERG JR, DONALD H	
			ART UNIT	PAPER NUMBER
			1722	

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/633,880	WESSELLS ET AL.
	Examiner Donald Heckenberg	Art Unit 1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 15 December 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 and 23-36 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 23 and 24 is/are allowed.  
 6) Claim(s) 1-9, 11, 12, 17, 18, 25-30, and 33-36 is/are rejected.  
 7) Claim(s) 10, 13-16, 31 and 32 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

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1. It is noted that pages of the amendment filed on December 15, 2004 list the application number as 10/628,749. This is not the correct application number for the instant application. It is suggested Applicants check their records to ensure that all the proper papers have been filed with proper applications.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8, 11, 12, 17, 25-30, 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson (U.S. Pat. No. 2,003,197; previously of record).

Jackson discloses a molding apparatus comprising an arched shaft (7) having a gripping end and a distal end remote from the gripping end. A shaper-scoop (1) is coupled to the distal end of the shaft at an attachment location (3). The scoop includes a first cavity for collecting and holding the material to be shaped. A former (1) including a second cavity cooperating with the first cavity is coupled to the scoop (when the two are mated together) at a location proximate to the attachment location

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(see Fig. 1 showing the former and scoop coupled together and the attachment location 3 "proximate" by being relatively close to the former and scoop). The former mates with the scoop to define a spherical shell for shaping the molding material (see Fig. 1).

Jackson also discloses the apparatus to be as such to be biased to an open position in which the scoop is separated from the former (p. 1, cl. 1, l. 55 - p. 1, cl. 2, l. 6).

Claims of the instant application recite an intended use for the apparatus. Specifically, the apparatus is to be used for collecting and compressing a compressible medium, with the compressible medium more specifically being defined as snow. It is well settled the intended use of an apparatus is not germane to the issue of the patentability of apparatus claims. If the prior art structure is capable of performing the claimed use, then it meets the claim limitation(s). In re Casey, 370 F.2d 576, 580, 152 USPQ 235, 238 (CCPA 1967); In re Otto, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963); MPEP § 2115. In the instant case Jackson discloses all of the structural features of the claimed apparatus, and is therefore clearly capable of being used with a compressible material such as snow. Jackson therefore anticipates the claimed use limitation of the claims.

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4. Claims 1-6, 8, 12, 17, 25-28, 30, and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Maxwell (U.S. Pat. No. 2,629,344).

Maxwell discloses a material forming apparatus. In the embodiment depicted in Figure 3 the apparatus comprises a shaft (22) having a gripping end and a shaping end remote from the gripping end (see Fig. 3). A shaper (70) is disposed at the distal end, with the shaper including a pair of opposing forming elements (72 and 74) attached to the distal end for relative pivotal motion between them, with the forming elements each including a cavity for shaping a particular material (see Fig. 3).

It is again noted that claims of the instant application recite an intended use for the apparatus. Specifically, the apparatus is to be used for shaping snow. As noted above in the rejection in view of Jackson the claimed use of the apparatus of the instant invention is not germane to the issue of patentability. As Maxwell discloses all of the structural features of the claimed apparatus, the apparatus is clearly capable of being used with a compressible medium such as snow. Maxwell therefore anticipates the claimed use limitation of the claims.

5. Claims 1-7, 9, 12, and 17 rejected under 35 U.S.C. 102(b) as being anticipated by Blevins et al. (U.S. Pat. No. 3,509,273; previously of record).

Blevins discloses a snowball forming and ejecting device. The device comprises a shaft (34) having a gripping end (towards element 40) and a distal end, with a scoop (42) coupled to the distal end of the shaft for collecting a bolus of a snow. A scoop (42) including a first cavity is coupled to the distal end of the shaft at an attachment location (see Fig. 2). A former (12) including a second cavity is coupled and mating with the scoop for molding and compressing the snow into a spherical ball retained within the scoop (see Fig. 2 and cl. 2, ll. 34-50). The former is coupled to the scoop "proximate" to the attachment location of the scoop shaft (see Fig. 2 showing the coupling of the scoop and former relatively near the attachment location). The device is as such to have a closed position relative to the scoop when the snow is molded in the ball when the scoop and former juxtapose to form a spherical shell (shown in fig. 2), as well as have an open position for releasing the snowball (shown in Fig. 3). Blevins further discloses the apparatus to comprise a latching mechanism (24) for inhibiting the former from moving to an opening position.

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6. Claims 1-6, 11, 12, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Pickering (U.S. Pat. No. 436,818; previously of record).

Pickering discloses a device comprising an arched shaft (B) with a scoop (F) including a first cavity coupled to a distal end of the shaft at an attachment location wherein threaded member (G') is coupled complementary member (H). A former (E) is coupled to, and mating with, the scoop, with the scoop and former creating a generally spherical shell when the two sections are juxtaposed (see Fig. 2). The former and scoop are coupled together at a location "proximate" to the attachment location (see Fig. 2 showing the coupling of the scoop and former relatively near the attachment location).

Pickering further discloses the scoop and shaft coupled together using a mating system. Specifically, the mating system comprises a threaded member (G') coupled to the scoop and a complementary member (H) coupled to the shaft (see Fig. 2).

It is again noted that claims of the instant application recite an intended use for the apparatus. Specifically, the apparatus is to be used for shaping snow. As noted above in the rejection in view of Jackson the claimed use of the apparatus of the instant invention is not germane to the issue of patentability. As Pickering discloses all of the structural

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features of the claimed apparatus, the apparatus is clearly capable of being used with a compressible medium such as snow. Pickering therefore anticipates the claimed use limitation of the claims.

7. Applicants' arguments filed December 15, 2004 have been fully considered but they are not persuasive.

Applicants' generally assert that the amendments to the claims distinguish the claims from the prior art of record. As described above, the prior art still anticipates the claims.

8. Claims 23 and 24 are allowed.

9. Claims 10, 13-16, 31 and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to teach or suggest an apparatus with the combination of features defined in claims 10, 23, or 31.

The closest prior art with respect to these claims is disclosed by Blevins, which is described above. Blevins, while disclosing a latching mechanism, fails to teach or suggest a release coupled to the latching mechanism operable from the gripping end for disengaging the latching mechanism as defined in claim 10.

Blevins also fails to teach or suggest the former (or trapper) to be coupled to the scoop at the same attachment location at the scoop is coupled to the shaft as defined in claim 23. None of the other prior art of record teaches or suggests the combination of features including the latching mechanism of claim 23.

See also the reasons for indicating allowable subject matter in the previous Office Action.

11. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Utech, can be reached at (571) 272-1137. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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Donald Heckenberg 3-7-5  
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